PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

1982-83

annual report

PUBLIC SERVICE
EMPLOYEE RELATIONS BOARD

ANNUAL REPORT
for the
FISCAL YEAR ENDING MARCH 31, 1983

PUBLISHED BY AUTHORITY OF THE
PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

EDMONTON, ALBERTA

To His Honour
Frank Lynch-Staunton
Lieutenant Governor of the Province of Alberta

May it please your Honour,

On behalf of the Public Service Employee Relations Board, I respectfully submit to you the Annual Report for the period from April 1, 1982, to March 31, 1983, pursuant to the requirements of Section 77 of The Public Service Employee Relations Act, Revised Statutes of Alberta, 1980, Chapter P-33 and amendments thereto.

Respectfully submitted,

Neil Crawford
Government House Leader

To: The Honourable Neil Crawford
Government House Leader

Sir:

I have the honour to submit to you, on behalf of the Public Service Employee Relations Board, the Annual Report of the Board for the fiscal period April 1, 1982, to March 31, 1983.

Respectfully yours,

D. Blair Mason
Chairman

personnel

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

Chairman – D. Blair Mason, Q.C.

Alternate Chairman – E.L. Bunnell

Members –

J. Patrick French

Agnes Helstein

S. Michael Marlowe

Gordon F. May

Executive Director – John F. Elsinga

Secretary – Gordon P. Procinsky

ANNUAL REPORT
OF THE

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

FOR FISCAL PERIOD ENDING MARCH 31, 1983

introduction

The Public Service Employee Relations Act, Revised Statutes of Alberta 1980, Chapter P-33, came into force on September 22, 1977, upon its proclamation by Order in Council 965/77.

This Act embraces the concept of final and binding arbitration for the resolution of collective bargaining disputes affecting employers and bargaining agents within the jurisdiction of the Act. At any time in their collective bargaining and upon joint application, negotiating parties together may request the Public Service Employee Relations Board to appoint a mediator to assist them in resolving a collective bargaining dispute. The Act also requires that each collective agreement contain provisions for the settlement of differences between the parties as to the interpretation, application or operation of their collective agreement, by third-party adjudication or by such other method as they agree upon.

Unlike some other labour relations statutes in Canada, The Public Service Employee Relations Act describes in considerable detail the basis upon which certain employees are to be excluded from a bargaining unit of employees. The Act also distinguishes those items in dispute between the bargaining parties that may be referred to arbitration for resolution from those that are precluded from consideration in the arbitration procedure. In all instances, the Public Service Employee Relations Board has the authority to make and is responsible for such determinations.

overview

During the fiscal year ending March 31, 1983, the Board experienced an unusually large caseload and as a consequence, a protracted hearing schedule. The matters processed by the Board were unprecedented in both volume and complexity, and placed heavy demands on the Board and its administrative staff. Given the part-time nature of the Board, it will be appreciated that the scheduling of the Board's hearings and as a result, the disposition of applications before it, created unique logistical factors to be overcome.

Applications seeking the establishment of arbitration boards to resolve collective bargaining disputes comprised the major element of the Board's caseload, as a result of the expiry of collective agreements during the year in many areas of the province's public sector. An uncertain economic climate in the province and the nation in late 1981 and early 1982 created difficult conditions for collective bargaining, resulting in frequent resort to binding arbitration for dispute resolution in the absence of voluntary settlement. Indeed, the Board's records reflect that only three public sector bargaining disputes were settled voluntarily and without third party intervention.

Applications for determination as to whether certain persons in public sector employment should be included in or excluded from the appropriate bargaining units constituted a second and significant element of the Board's caseload. As applications of this nature can affect many persons employed in Alberta's public sector, the processing of such applications is frequently marked by extensive presentations and considerable evidence. In a series of determinations during this fiscal year the Board's decisions included detailed reasons in an effort to enunciate the Board's interpretation of the legislation governing bargaining unit composition. In this area, one of the parties affected by a decision of the Board unsuccessfully sought, by appeal to the Court of Queen's Bench, to have the Board's decision quashed. The statistics on Board activities outlined elsewhere in this report will identify the number of applications of this type processed by the Board and the number of employees or persons immediately affected by those applications.

In one of these decisions the Board did remind the parties of the responsibility placed on them by the legislation to attempt to resolve issues of this nature themselves rather than by application to the Board.

The third component of the Board's 1982-1983 caseload involved a number of applications by trade unions for certification as a bargaining agent for employees in newly created bargaining units. In particular, the enactment of The Technical Institutes Act and The Mental Health Amendment Act created new and independent boards with responsibility for the administration of the Northern Alberta Institute of Technology, Edmonton, Alberta, the Southern Institute of Technology in Calgary, Alberta and the Mental Health Hospitals in Edmonton and Ponoka respectively. As a consequence the Board did receive a number of applications for certification from trade unions seeking

authority to represent certain of the employees at those institutions as a bargaining agent.

In several instances during this year, decisions of the Board have been the subject of judicial review at various levels of the Courts. A summary of the issues raised in those proceedings and the disposition thereof by the Court is provided elsewhere in this report.

application

Aproximately 50,000 employees in the province and their employers fall within the scope of The Public Service Employee Relations Act. The majority of this number are employed directly by the Crown in right of Alberta in one of some twenty-six departments of the provincial government. For collective bargaining purposes such employees are allocated to one of twelve divisional bargaining units. The recent enactment by the Legislature of The Technical Institutes Act and The Mental Health Amendment Act resulted in the re-allocation of a number of employees from the existing divisional bargaining units as the responsibility for the operation of several institutions was transferred from a department of the provincial government to newly-established boards of administration.

Other employers and their employees to whom the Act applies include the following:

Corporations
- Alberta Home Mortgage Corporation
- Alberta Housing Corporation
- Alberta Oil Sands Technology and Research Authority
- Alberta Opportunity Company
- Hail Crop Insurance Corporation

Commissions
- Alberta Alcoholism and Drug Abuse Commission
- Alberta Petroleum Marketing Commission
- Alberta Racing Commission

Universities and Colleges (academic staff excluded)
- Athabasca University
- University of Alberta
- University of Calgary
- Banff Centre
- Fairview College
- Grande Prairie Regional College
- Grant MacEwan Community College
- Keyano College
- Lakeland College
- Lethbridge Community College
- Medicine Hat College
- Mount Royal College
- Olds College
- Red Deer College
- Southern Alberta Institute of Technology
- Northern Alberta Institute of Technology

Hospitals	— Alberta Children's Provincial General Hospital
	— Foothills Provincial General Hospital
	— Glenrose Provincial General Hospital
	— The Provincial Cancer Hospitals Board
	— University Hospitals Board
Boards	— Alberta Liquor Control Board
	— Teachers' Retirement Fund Board
	— Workers' Compensation Board
	— The Mental Health Hospital Board, Edmonton
	— The Mental Health Hospital Board, Ponoka
Councils	— Alberta Research Council

administration and personnel

The Public Service Employee Relations Board is responsible for the administration of the Act. The Board consists of four members, a Chairman and an Alternate Chairman, each appointed to serve on a part-time basis. All members, the Chairman and Alternate Chairman were re-appointed for a two-year term by Order-in-Council issued September 16, 1981.

There was no change in the composition of the Board during the fiscal year under review.

significant cases

(1)

BOARD OF GOVERNORS OF OLDS COLLEGE, OLDS, ALBERTA AND THE ALBERTA UNION OF PROVINCIAL EMPLOYEES, EDMONTON, ALBERTA — FILE: 140-095-502

The 1980-81 Annual Report of the Board provided a brief commentary as to the issues giving rise to protracted judicial review proceedings of a decision of the Board issued in April 1979. In that decision the Board made determinations as to whether certain items claimed in dispute by the Union and by the Employer were properly arbitral items that could be referred to arbitration for resolution having regard to the provisions of Section 48 of The Public Service Employee Relations Act.

The final step in those proceedings before the Courts was concluded on June 23, 1982, when the Supreme Court of Canada issued its judgement with respect to the appeal launched by the Board and the affected Union on the judgement of the Alberta Court of Appeal.

In the majority reasons of Chief Justice Laskin, concurred in by six of his colleagues, the original decision of the Board was fully restored, with Justice Martland and Justice Beetz dissenting.

In so doing the Court recognized the specialized function of a tribunal such as the Public Service Employee Relations Board and the particular expertise which it has and is expected to apply in the interpretation and administration of the statute assigned to its responsibility. Commenting on the role of the Courts in judicial review of the decisions of such tribunals, Chief Justice Laskin observed: "Here the Public Service Employee Relations Board is operating in its home territory, so to speak. It was concerned with the interpretation and application of provisions confided by its constituent Act to its exclusive administration, with its decisions stated to have final and conclusive effect. In such circumstances, the proper approach by a reviewing Court is not the blunt substitution of judicial opinion for the views of the Board but rather that expressed by Dickson J. in Canadian Union of Public Employees v. New Brunswick Liquor Corporation, (1979) 2 S.C.R. 227, at p. 237, where he formulated the issue of scope of review as follows: 'Was the Board's interpretation so patently unreasonable that its construction cannot be rationally supported by the relevant legislation and demands intervention by the Courts upon review?' "

The majority (7-2) of the full assembly of the Supreme Court of Canada allowed the appeal, confirming that the Board's decision could not be regarded as patently unreasonable and restoring that decision as originally issued. As a result, the arbitration board originally established to resolve the items in dispute between the Union and the Employer was reconvened to deal with those items affected by the Court proceedings.

(2)

THE ALBERTA UNION OF PROVINCIAL EMPLOYEES, EDMONTON, ALBERTA AND THE CROWN IN RIGHT OF ALBERTA, EDMONTON, ALBERTA — FILE: 100-001-502.

As a result of a number of applications by the Union, the Board was called upon to interpret and apply the provisions of Section 21(1) of The Public Service Employee Relations Act. It is this Section of the Act which delineates the composition of bargaining units of employees under the Act and describes those persons employed by an employer who shall not be included in a bargaining unit or any other unit for collective bargaining.

In a series of five decisions and extensive reasons for decision, the Board outlined the manner in which, in its view, the exclusion provisions of Section 21 were to operate, with particular emphasis on managerial, personnel or supervisory positions. While an appeal was launched in the Court of Queen's Bench to overturn one of those decisions, that appeal was dismissed and the Board's decision thus remained unchanged.

ANNUAL STATISTICS AND COMPARATIVE DATA

April 1, 1982 to March 31, 1983

Section of Act	Nature of Application		Disposition 1980/81	1981/82	1982/83
*9	Determinations	Granted	8	7	13
		Dismissed	3	6	0
		Withdrawn	4	3	5
		Outstanding	5	12	4
* TOTAL NUMBER OF PERSONS AFFECTED — 256					
11	Reconsideration	Granted	0	0	5
		Withdrawn	0	0	1
23	Professional Exclusion	Granted	0	0	10
		Refused	0	0	0
		Outstanding	0	2	0
25	Certification	Granted	4	0	13
		Refused	9	0	7
		Withdrawn	0	0	1
		Outstanding	0	2	0
32	Revocation	Granted	0	0	2
		Refused	0	0	0
		Outstanding	0	1	0
39	Failure to Bargain in Good Faith	Granted	0	0	1
		Refused/Dismissed	2	0	0
		Withdrawn	1	0	1
		Outstanding	0	0	0
46	Appointment of Mediator	Granted	4	0	1
		Withdrawn	1	0	0
		Outstanding	0	0	0
49	Establish Arbitration Board	Granted	7	1	21
		Refused	1	0	2
		Withdrawn	6	0	1
		Outstanding	0	0	0

52	Appointment Chairman & Member Arbitration Board	Granted	4	1	11
		Refused	0	0	0
		Withdrawn	0	0	0
		Outstanding	0	0	0
64	Appointment of Adjudicator	Granted	4	3	4
		Withdrawn	0	0	0
		Refused	0	0	0
		Outstanding	0	0	0
74	Unfair Practice Complaints	Granted	0	0	0
		Dismissed	1	4	1
		Refused/Withdrawn	1	4	1
		Outstanding	0	0	0
90	Successor Trade Union	Granted	0	0	0
		Dismissed/Withdrawn	0	0	4

Days of Board Hearings —1980/81 25 Days
—1981/82 22 Days
—1982/83 41 Days

Estimated number of employees affected by Certification
—1980/81 594
—1981/82 140
—1982/83 2,962

Total applications disposed of
—1980/81 63
—1981/82 29
—1982/83 105

Total applications outstanding
—1980/81 5
—1981/82 17
—1982/83 4

budgetary review

Approved Manpower and Operating Costs

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

		% Change
1980/81	277,882	+14.0
1981/82	303,606	+ 9.3
1982/83	687,370*	+51.3*

*includes $350,000 Special Warrant.

in appreciation

The Board takes this opportunity to publicly express its appreciation to the Honourable Neil Crawford and his Executive Assistant, Mr. John Scrimshaw for their assistance and cooperation in dealing with the concerns of the Board throughout this past year.